

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development (HCD) proposes to amend current regulations relating to occupational licensing applicants' fingerprint submissions for criminal background checks. The primary objective of this proposal is to conform HCD's current occupational licensing regulations with recent California Department of Justice (DOJ) requirements to require Live Scan fingerprinting (or fingerprint card submission if Live Scan service is "regionally unavailable" or as otherwise deemed necessary by DOJ) for occupational licensing applicants pursuant to Penal Code Section 11077.1. The secondary objective of the proposal is to require the use of only DOJ-certified fingerprint "rollers" or law enforcement personnel for the fingerprinting process pursuant to Penal Code Section 11102.1.

HCD HAS NOT SCHEDULED A PUBLIC HEARING ON THIS PROPOSED ACTION.

However, HCD will hold a hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period which is on September 6, 2005.

HCD WILL ACCEPT WRITTEN COMMENTS regarding the proposed regulatory action from July 22, 2005 until 5:00 p.m. on September 6, 2005. Written comments may be submitted by regular or electronic mail, by facsimile transmission or may be hand-delivered to either contact person (Mr. Salanoa or Ms. Shaffer), as indicated below.

CONTACT PERSONS:

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Please address any technical questions about this regulatory proposal to Mr. Salanoa. Requests for rulemaking documents, or questions regarding the administrative rulemaking process, may be addressed to Ms. Shaffer.

AUTHORITY AND REFERENCE

Authority: Health and Safety Code Sections 18015, 18031, 18050(c), 18052.6, 18056, and 18075.

Reference: Health and Safety Code Sections 18001.8, and 18035-18066.5 (inclusive); Civil Code Sections 1797-1797.7 (inclusive); Penal Code Sections 11077.1 and 11102.1; Financial Code Sections 17003 and 17004; and 8 U.S.C. 1621, 1641, and 1642.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

LIVE SCAN FINGERPRINT REQUIREMENT

Currently, HCD's regulations allow submittal of only hard fingerprint cards to fulfill application requirements for criminal background checks. This action proposes to amend HCD's regulations to conform to the mandates of Penal Code Section 11077.1. Penal Code Section 11077.1 was added by Chapter 470, Statutes of 2003 to require the submittal of "electronically-submitted" fingerprints (Live Scan process) for occupational licensing criminal background checks, with exceptions for regional unavailability of Live Scan service or as deemed necessary by the Department of Justice (DOJ).

Additionally, HCD is amending regulations to notify applicants that DOJ will only accept fingerprints processed by law enforcement personnel and DOJ-certified fingerprint operators, pursuant to Penal Code Section 11102.1.

HCD's occupational licensing applicants include manufacturers, dealers, distributors, and salespersons in the manufactured housing and commercial modular industries. Applicants also include continuing education course providers and instructors who are approved to provide manufactured housing industry applicants and licensees with approved training. Applicants for licensure are required to be fingerprinted for purposes of conducting a criminal history record check. The fingerprints are submitted to the DOJ, and in some instances, to the Federal Bureau of Investigation (FBI).

Further, the proposed action provides that applicants may use either the DOJ's form "BCII 8016" entitled "Request for Live Scan Service" or HCD's new form "HCD OL 8016". HCD's form will have the same title, request the same information, and have substantially the same format as the DOJ form. The HCD form will incorporate a note that cautions applicants that illegible, incomplete, or inaccurate information may result in processing

delays or the denial of their applications. The HCD form will include pre-printed DOJ and HCD information to assist the applicant in properly completing the form.

HCD is also proposing several technical amendments within this rulemaking. For example, references to the term “commercial coach” are being changed to “commercial modular” to be consistent with a 2003 statutory change to Health and Safety Code (H&SC) Section 18001.8. In addition, the department will define “DOJ” as the California Department of Justice for the purposes of clarity in the new regulations.

Lastly, HCD proposes to remove form HCD OL 90 from regulatory text and to incorporate the form by reference. The updated revision dates for this form and others are also added to the regulatory text in order to satisfy requirements to incorporate by reference forms that are required by regulation.

FORMS INCORPORATED BY REFERENCE

HCD OL 12	Revised 11/05	Occupational License Application for Manufactured Home/ Mobilehome/ Commercial Modular Manufacturers, Distributors, and Dealers (Part A)
HCD OL 15	Revised 11/05	Notice of Change of Corporate Officer(s) and/or Director(s)
HCD OL 16	Revised 11/05	Occupational Licensing Application for Manufactured Home/Mobilehome/ Commercial Modular Salesperson (Part A)
HCD OL 21	Revised 11/05	Occupational License Application for Manufactured Home/Mobilehome/ Commercial Modular Manufacturers, Distributors, and Dealers (Part C)
HCD OL 28	Revised 11/05	Certificate of Appointment
HCD OL 29	Revised 11/05	Occupational License Application for Manufactured Home/Mobilehome/

		Commercial Modular Manufacturers, Distributors, Dealers and Salespersons (Part B)
HCD OL 50	Revised 11/05	Occupational License Application for Manufactured Home/ Mobilehome/ Commercial Modular Dealers (Part D)
HCD OL 90	Revised 11/05	Application for Manufactured Home/ Mobilehome/Commercial Modular 90-Day Certificate
HCD OL ED 122	Revised 11/05	Application for Course Provider and Preliminary or Continuing Education Course Approval (Part A)
HCD OL ED 124	Revised 11/05	Application for Preliminary or Continuing Education Instructor Approval
HCD OL 8016	New 11/05	Request for Live Scan Service Applicant Submission

SECTIONS AFFECTED

The proposed amendments are located in Sections 5002, 5020, 5021, 5025, 5340 and 5348 of Title 25 of the California Code of Regulations (CCR), Division 1, Chapter 4.

DISCLOSURES REGARDING THE PROPOSED ACTION

HCD has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: The proposed Live Scan and hard-copy fingerprinting requirements do not impose any cost upon any other state agency. The Live Scan requirements are expected to save HCD a minor and undetermined amount of money due to a decreased necessity for follow-up actions on fingerprint card status. In addition, the DOJ will save a minor and undetermined amount of money due to a decreased necessity for its response to status requests regarding fingerprint cards.

Cost to any local agency or school district which must be reimbursed in accordance with

Governmental Code Sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None; however, an unknown amount of savings may occur because local law enforcement personnel will be able to utilize a more efficient and effective method for processing fingerprint information.

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: The HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The proposed changes will not affect the creation or elimination of jobs within California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

SMALL BUSINESSES may be affected by these regulations.

CONSIDERATION OF ALTERNATIVES: Throughout this rulemaking, HCD must determine that no reasonable alternative considered will be more effective in carrying out the purpose for which this regulatory action is proposed. HCD has initially determined that no alternative will be as effective, and less burdensome, for affected private persons than the proposed action because the mandated use of the Live Scan and hard-copy fingerprinting processes are imposed by statute. These regulations are proposed to implement the requirements of that statute.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

Copies of an Initial Statement of Reasons and the proposed regulatory text are available upon request from Ms. Wendy Shaffer at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public comment period, HCD may adopt the proposed regulations substantially as proposed or with modifications which are sufficiently related to the originally-proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least fifteen (15) days prior to the date on which HCD adopts the regulations. Requests for copies of any modified regulations should be addressed to the agency contact persons identified above. HCD will accept written comments about the modified regulations during the 15-day period of availability.

IF REQUESTED from the contact person, this **PUBLIC NOTICE** is available in one of the following alternate formats: 1) LARGE PRINT or 2) electronic data file in Microsoft Word for Windows.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code Section 11346.9. This document will also be available from Ms. Shaffer at the above address.

AVAILABILITY OF DOCUMENTS

All information HCD is considering as the basis for this proposal is maintained in a rulemaking file which is available for inspection at 1800 Third Street, Suite 260, Sacramento, California, Monday through Friday from 8:00 a.m. to 5:00 p.m.

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can also be accessed at the HCD website at the following address: <http://www.hcd.ca.gov>.